

## CHAPTER 11: FLEXIBLE APPROACHES

### 11.1 VARIANCES

#### 11.1.1 PURPOSE

A variance is intended to grant a property owner relief from the terms of the Land Management Code where conditions are such (particular physical surroundings, shape, or topographical conditions) that literal enforcement of the Code would cause an unreasonable hardship upon the owner, as distinguished from a mere inconvenience or increased costs. A variance is not intended to disregard the spirit of the Brian Head Town General Plan, Land Management Code or Design Standards (Chapter 12). A variance may be requested for physical constraints to the lot that deprive the applicant of the reasonable use of his property when others similarly situated are entitled to make such use of their property.

#### 11.1.2 REVIEW PROCEDURES

##### a. APPLICATION

An application for variance review must be filed with the Town, and the required fee paid in advance. If, in the course of subdivision or building permit review, it is determined that a variance is required or desired, all further action shall be stayed until the applicant shall have obtained the variance.

##### b. APPEAL AUTHORITY REVIEW

The Appeal Authority shall review the application in a hearing to be held within a reasonable time after the application is submitted. Notice to adjoining property owners is required pursuant to Section 1.8 (Notice) of this Title. The Appeal Authority shall grant or deny the variance pursuant to the standards and conditions set forth by state law (Utah Code Ann. § 10-9a-702 or as amended), and those set forth below.

#### 11.1.3 STANDARDS FOR REVIEW

- a. The Appeal Authority may grant a variance only if:
  - i. literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
  - ii. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
  - iii. Granting the variance is essential to the enjoyment of a substantial property right

- possessed by other property in the same zone;
  - iv. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - v. The spirit of the land use ordinance is observed and substantial justice is done.
- b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (a) above, the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:
- i. is located on or associated with the property for which the variance is sought; and
  - ii. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
- c. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
- d. In determining whether or not there are special circumstances attached to the property under Subsection (a), the Appeal Authority may find that special circumstances exist only if the special circumstances:
- i. relate to the hardship complained of; and
  - ii. deprive the property of privileges granted to other properties in the same zone.
- e. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

#### **11.1.4 APPEAL**

The Town or any person aggrieved by a final decision of the Appeal Authority may appeal to a court of competent jurisdiction provided the appeal is filed with the court within 30 days after the decision of the Appeal Authority.

## **11.2 CONDITIONAL USE PERMIT**

### **11.2.1 PURPOSE**

Although each Zoning District is primarily intended for a predominant type of use (i.e., dwelling units in residential districts), there are a number of uses which the Town Council has identified that may be appropriate in a particular district if conditions are met that mitigate potential adverse impacts of the proposed use. For example, as a condition of approval, a Bed and Breakfast may be required to furnish adequate parking to accommodate all potential occupants of the home. The conditional use review is intended to provide additional information necessary to assure compatibility and harmonious relationships between proposed uses, surrounding properties, and the Town in general.

### 11.2.2 APPROVAL REQUIRED

Conditional use approval is required for the conditional uses in each zoning district. Conditional use approval may be revoked upon failure to comply with all conditions attached to the original approval of the conditional use as set forth in a conditional use permit.

### 11.2.3 REVIEW PROCESS

#### a. APPLICATION

- i. An application for approval of a conditional use shall be filed with the Building Department on a form provided by the Town and must include written consent by the owner(s) of all property on which the conditional use activity shall be conducted.
- ii. The appropriate fee from the Consolidated Fee Schedule shall be submitted with the application.
- iii. Other information required to be submitted on or with the conditional use application can be found in Chapter 4 (table 2) of this Title.

#### b. STAFF REVIEW

Upon receipt of a completed conditional use application, the Town Staff shall conduct a review of the application. The Town Manager or designee shall prepare and deliver to the Planning Commission a written advisory report with a recommendation, including recommended conditions on the application.

#### c. PLANNING COMMISSION REVIEW & ACTION

Within a reasonable time of receipt of a complete application, the Planning Commission shall give public notice consistent with Section 1.8 (Notice) of this title and hold a public hearing on the proposed conditional use. Members of the public may submit written comments to be part of the public hearing record or may present oral comments at the hearing.

Upon receipt of the Town Staff and other applicable agency recommendations, and input from the public hearing, the Planning Commission shall review the project and may impose reasonable conditions of approval which are designed to mitigate the reasonably anticipated detrimental effects of the proposed use. If the applicant accepts the conditions imposed, Planning Commission may grant the conditional use permit. If the reasonably anticipated detrimental effects of the proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the Planning Commission may deny the conditional use.

### 11.2.4 STANDARDS FOR REVIEW

No conditional use permit may be issued unless the Planning Commission finds that the application meets the following standards and conditions:

- a. Protects the safety of persons and property

- i. Will not result in unreasonable traffic congestion or traffic hazards.
  - ii. Has adequate and necessary access for municipal services.
- b. Will not exceed the obligations and/or financial capability of the Town and will not require a level of community facilities and services greater than that which is available or which may be provided.
- c. Will protect environmental values:
  - i. Will not cause unreasonable air, water, groundwater, light or noise pollution.
  - ii. Does not have critically expansive soils, high water table, slope instability, or other soil problems which cannot be mitigated.
- d. Consistent with the Town General Plan
  - i. Will comply with the requirements of the Zoning District in which the use is to be established and with all other requirements of this Title.
  - ii. Will be compatible with the character of the neighborhood and surrounding structures in scale, mass and traffic circulation.
- e. The applicant has assured performance of obligations by posting bond or other adequate security as determined necessary by the Planning Commission per Chapter 13 of the LMC.

With its approval, the Planning Commission may impose such conditions and safeguards to ensure compliance with the requirements, standards, or conditions of this Section. The violation of any condition, safeguard or commitment of record by the applicant shall be sufficient grounds for revocation of conditional use approval.

#### **11.2.5 TRANSFERABILITY**

A conditional use permit is transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which approval was granted.

#### **11.2.6 TIME LIMIT**

The approval for the use shall expire unless a building permit is issued, or the conditional use begins, within a period of 12 months from the date of conditional use approval.

#### **11.2.7 MODIFICATION**

No approved conditional use may be modified, structurally enlarged, or expanded unless the site plan is amended and reviewed and approved in accordance with the procedures and standards of Section 11.2.

### **11.2.8 RELATED PERMITS AND REQUIREMENTS**

A conditional use shall also be subject to all other procedures, permits, and requirements of other applicable Ordinances and regulations of the Town. In the event of any conflict between the provisions of a conditional use permit and any other permit or requirement, the more restrictive provisions shall prevail.

## **11.3 PLANNED UNIT DEVELOPMENT (PUD)**

### **11.3.1 PURPOSE**

The purpose of the planned unit development (PUD) is to provide for fractional ownership of property on a single parcel of land, to encourage flexibility in the design of the site, to preserve open space through clustering concepts, and to ensure compliance with the uses and densities of the underlying zone district regulations.

A planned unit development may also mean an integrated design for development of residential, commercial, or light industrial uses in which one or more of the regulations, other than use and density regulations of the Zoning District in which the development is to be situated, is waived or varied to allow flexibility and initiative in site and building design and location in accordance with an approved plan and imposed general requirements as specified in this Chapter.

In the case of fractional ownership PUD, it is the intent of this section to create a functioning association of common owners with sufficient financial and leadership strength to maintain a sustainable project.

### **11.3.2 REVIEW PROCESS**

Planned Unit Developments (PUD) shall be reviewed and approved under the same Land Use Authority provisions as the Subdivision process.

### **11.3.3 STANDARDS FOR REVIEW**

The applicant shall demonstrate the following:

- a. The development shall be in a single ownership at the time of application or filed jointly by all owners of the property.
- b. The proposed uses of the property are consistent with the underlying zoning.
- c. The arrangements of structures and open spaces will not adversely affect adjacent properties. (For example, where deemed necessary by the Planning Commission, the lowest height and least intensity of buildings and uses shall be arranged around the boundaries of the development.)
- d. The proposed use and location shall provide a service or facility that will contribute to the

- general well being of the neighborhood and the community.
- e. The proponents of the planned unit development have demonstrated to the satisfaction of the Planning Commission and Town Council that an organizational structure and financial plan is established for construction, phasing, and maintenance (including HOA responsibilities and budget projection for 10 years) to ensure sustainability of the project.
- f. The planned development is consistent with the Brian Head Town General Plan.
- g. The development is planned as a single project (with possible phasing) with continuity of building design, theme, and uses.
- h. Easements are created to establish and maintain the continuity of existing and planned trails and ski-ways with ownership and maintenance being the responsibility of the approved organizational structure unless specifically accepted by the Town.

In cases where the applicant requests a waiver or flexibility from the zoning standards (excluding use and density, which may not be waived) they shall demonstrate the following:

- a. Any request to modify physical restrictions identified in Chapter 7 shall be submitted for approval by the Planning Commission.
- b. Minimum landscape requirements identified in Chapter 7 shall be increased by 10%, and application shall include a detailed landscape plan.
- c. Special consideration has been given to preserving natural vegetation, land formations and topography.

#### **11.3.4 APPEALS**

A final decision of the Land Use Authority may be appealed to the Appeal Authority following the procedures of section 3.2.8 of this Title, but must be filed within 10 regular business days of the decision.